

ORIGINAL
RECEIVED

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 12 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-89
AURIO A. MATOS)	File No. BPH-911114MS
LLOYD SANTIAGO-SANTOS and LOUDRES)	
RODRIGUES BONET)	File No. BPH-911115MP
For Construction Permit for a New)	
Station on Channel 293A in)	
Culebra, Puerto Rico)	

To: Honorable Joseph P. Gonzalez
Administrative Law Judge

PETITION TO ENLARGE ISSUES

AURIO A. MATOS ("Matos"), pursuant to Section 1.229(b), hereby petitions the Presiding Judge to enlarge the issues against applicant Lloyd Santiago-Santos and Loudres Rodrigues Bonet ("Santiago and Rodriguez"),^{1/} to include the following:

- a. Whether Santiago and Rodriguez had in place the necessary documentation when they certified their financial qualifications.
- b. Whether Santiago and Rodriguez are financially qualified.
- c. Whether in light of evidence adduced pursuant to the foregoing, Santiago and Rodriguez are basically qualified to be Commission licensees.

I. PROCEDURAL MATTERS

A. The Petition Is Timely Filed.

1. Section 1.229(b)(3) of the Commission's Rules provides for the filing of motions to enlarge issues based upon new facts or newly discovered facts within 15 days after such facts are

^{1/} Although the Commission's Hearing Designation Order in this proceeding used the short-form of "Santos and Bonet," it appears to be based upon an incorrect usage of Lloyd Santiago and Lourdes Rodriguez' surnames.

No. of Copies rec'd
List A B C D E

File

discovered by the moving party.^{2/} The Commission has held that a petition to enlarge filed within 15 days of receipt by the moving party of the necessary information to support the motion is timely. Muncie Broadcasting Corp., 54 RR 2d 42, 45, n. 15 (1983). Matos has filed this Petition within 15 days of the taking of the depositions of the Santiago and Rodriguez principals and receipt of certain financial documents from Santiago and Rodriguez.

B. Matos' Petition Meets the Threshold Requirements for Requesting Enlargement of Issues.

2. The Petition is supported by facts of which official notice may be taken, specifically facts contained in the Santiago and Rodriguez Form 301 Application, and other matters contained in the Commission's files. See, Southern Indiana Broadcasting, Ltd. v. F.C.C., 935 F.2d 1340, 1342 (D.C. Cir. 1991) (official notice can be taken of material contained in the Commission files, including the application). In addition, Matos will supplement this Petition with the relevant pages (when received) from the deposition testimony by the Santiago and Rodriguez principals.

3. Section 309(d) of the Communications Act of 1934, as amended (the "Act") is the basis for the Commission's standards for petitions to enlarge issues under 47 C.F.R. §1.229. Gencom, Inc. v. F.C.C., 832 F.2d 171 (D.C. Cir. 1987). Section 309(d) of the Act specifically allows for the filing of petitions to deny (and, therefore, enlargement of issues) on the basis of facts "of which official notice may be taken..." 47 U.S.C. §309(d)(1). See also,

^{2/} 47 C.F.R. §1.229(b)(3).

Spanish International Broadcasting Co. v. F.C.C., 385 F.2d 615 (D.C. Cir. 1967) (determination about whether to hold hearing can be made on the basis of facts of which Commission may take official notice).

4. Below, Matos has set forth specific questions of fact so as to demonstrate that grant of the Santiago and Rodriguez application would not serve the public interest. Thus, it has complied with the statutory conditions of Section 309(d) of the Act. See, Citizens for Jazz on WRVR, Inc., 775 F.2d 392, 394 (D.C. Cir. 1985).

II. FACTS SUPPORTING REQUESTED ISSUES

5. Lloyd Santiago-Santos certified the Santiago and Rodriguez application on November 14, 1991.^{3/} Therein, Santiago and Rodriguez stated that they estimated that total costs of construction and operation for three months without revenues would be \$125,000.^{4/} Santiago and Rodriguez stated that their personal funds would be the source of \$65,000 of the total needed to meet estimated costs.^{5/}

6. Santiago and Rodriguez did not have sufficient "net liquid assets" in November 1991 to support their certification. Exhibit 1 to the Petition is the "Statement of Financial

^{3/} See, Santiago and Bonet Form 301 Application, Section VII, Page 25. Matos hereby requests official notice of this fact and all references to the Santiago and Bonet application. Southern Indiana v. F.C.C., supra.

^{4/} Form 301 Application, p. 6, Section III, Item 2.

^{5/} Id., Item 3.

Condition/December 31, 1991" for Mr. and Mrs. Lloyd Santiago Santos, which Santiago and Rodriguez have produced in discovery to Matos.^{6/} Therein, Santiago and Rodriguez list as liquid assets only "cash, including certificate of deposit at 10%" in the amount of \$35,000.00. (Exhibit 1, p. 1). The Statement also reports a \$20,000.00 asset as "Investment El Periódico Del Norte." Id. Although Note 2 of the Statement reports that this "[r]epresents an Investment of the 50% of the outstanding common stock of El Periódico Del Norte....," there is no notation of any appraisal of the stock. There is no indication of a ready market for the El Periódico stock.

7. The Statement also lists as "Due from El Periódico del Norte" the amount of \$30,000.00. (Exhibit 1, p. 1). The Statement lists (without attached appraisal but described as a single dwelling unit in Marina Bahia Cataño, Puerto Rico) an estimated \$140,000.00 as the value of the Santiago and Rodriguez residence. Id., pp. 1-2. The Statement does note that there is a Mortgage in the amount of \$73,000.00 payable through August 2017. Id.

8. The Statement lists total liabilities in the amount of \$148,000.00. (Exhibit 1, p. 1).

III. ARGUMENT

9. When the Commission revised the Form 301 application, it specifically ruled that an applicant must have the supporting documentation on hand when it certifies the application. Report

^{6/} This document was produced by Santiago & Rodriguez on June 29, 1993, pursuant to a request made at depositions by Matos.

and Order on Revisions to FCC Form 301, 4 FCC Rcd 3853, 66 RR 2d 519, 529 (¶ 43) (1989). The Commission's Instructions to FCC Form 301 explicitly set forth the required information.^{7/} The Commission has specifically distinguished this from the procedure for applicants who filed up until July 1989. Northampton Media Associates, 4 FCC Rcd 5517, 5519 (¶ 15) (1989), recon. den., 5 FCC Rcd 3075 (1990), aff'd sub nom. Northampton Media Associates v. F.C.C., 941 F.2d 1214 (D.C. Cir. 1991). See also, Emission de Radio Balmaseda, Inc., 8 FCC Rcd ____ (FCC 93-324, released June 28, 1993, at ¶¶ 4-5) (applicants who preceded the revision to Form 301 in 1989 not required to have documentation in hand).^{8/}

10. Each person or entity that is not a "financial institution" that is the source of funds must have sufficient "net liquid assets" committed to the application project to be able to

^{7/} (c) For each person identified in response to Question 6, Section III, who has **agreed** to furnish funds ... a balance sheet or a financial statement showing:

All liabilities and current and liquid assets sufficient to meet current liabilities.

Financial ability to comply with the terms of the agreement to furnish funds ...; and

Net income after Federal income tax, received for the past two years.

Instructions to FCC Form 301 (June 1989), p. 6.

^{8/} Significantly, the U.S. Court of Appeals criticized the Commission's departure from the standard enunciated in Las Americas Communications, Inc., 1 FCC Rcd 786 (Rev. Bd. 1986), which required the existence of documentation at the time of certification. 941 F.2d at 1216. See also, Weyburn Broadcasting Ltd. Partnership v. F.C.C., 984 F.2d ____, ____ (D.C. Cir. 1993).

support the financial certification. Northampton, supra; Port Huron Family Radio, Inc., 5 FCC Rcd 4562 (¶ 5) (1990).

11. To establish the availability of funds to meet expected costs, an applicant relying on non-liquid assets, such as non-publicly traded stock, must provide substantial and reliable evidence to prove the value of such assets. Roxanne Givens, 5 FCC Rcd 5371 (Rev. Bd. 1990), recon. den., 5 FCC Rcd 2905, rev. den., 6 FCC Rcd 2961 (1991); Port Huron, supra. In the absence of proof of marketability or liquidity, stock per se does not afford reasonable assurance of the availability of funds. American Cellular Corp., 103 FCC 2d 26, 29 (¶ 5e) (1986); Capital City Community Interests, Inc., 2 FCC Rcd 1984, 1985 (Rev. Bd. 1987).

12. The Commission considers real estate is a similarly unreliable source of funds for a certification of "net liquid assets." The Santiago and Rodriguez Statement does not provide any appraisal of the real estate or other assets upon which they might be relying to "hypothecate" or "sell" to generate sufficient funds to meet estimated costs of construction or operation. Port Huron, supra; American Cellular Corp., supra; Donald E. Hilgendorf, 4 FCC

- 7 -

AURIO A. MATOS

1


CERTIFICATE OF SERVICE

I, Scott Cinnamon, do certify that on this 12th day of July, 1993, a copy of the foregoing was sent via first class mail, postage pre-paid or delivered, as indicated, to the parties set forth below:

Honorable Joseph P. Gonzalez
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 221
Washington, D.C. 20554 *

Gary Schonman, Esq.
Hearing Branch
Federal Communications Commission
STOP CODE 1800C4
2025 M Street, N.W., Room 7212
Washington, D.C. 20554 **

Audrey P. Rasmussen, Esq.
O'Connor & Hannan
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006



Scott Cinnamon

* - Hand delivered

** - via FCC Mailroom

Mr. and Mrs. Lloyd Santiago Santos
Statement of Financial Condition
December 31, 1991

ASSETS

Cash , Including certificate of deposit at 10%	\$35,000
---	-----------------

Mr. and Mrs. Lloyd Santiago Santos
Notes to Statement of Financial Condition

Note 1- Summary of significant accounting policies

The financial statement includes the assets and liabilities of Mr. and Mrs. Lloyd Santiago who is Sales Manager for el Periódico del Norte a regional newspaper of the northern part of the Island covering 16 municipalities from Dorado to Isabela. Mrs. Santiago is accountant for a local CPA firm in Hato Rey. Assets are stated at their estimated current values